

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ARTHUR BELFIORE,

Plaintiffs,

-against-

979 THIRD AVENUE ASSOCIATES, LLC, D&D
BUILDING COMPANY, LLC, COHEN BROTHERS
REALTY CORPORATION and TRICON
CONSTRUCTION SERVICES, INC.,

Defendants.

TRICON CONSTRUCTION SERVICES, INC.,

Third-Party Plaintiffs,

-against-

ALL KINDZA FLOORING,

Third-Party Defendant.

979 THIRD AVENUE ASSOCIATES, LLC, D&D
BUILDING COMPANY, LLC, COHEN BROTHERS
REALTY CORPORATION,

Third-Party Plaintiff,

-against-

DAVID SUTHERLAND SHOWROOMS – NEW YORK,
LLC and ALL KINDZA FLOORING, INC.,

Third-Party Defendants.

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Defendant, TRICON CONSTRUCTION SERVICES, INC., by its attorneys, ABRAMS,
GORELICK, FRIEDMAN & JACOBSON, P.C., as and for its Answer to Third-Party Defendant

***ANSWER TO COUNTERCLAIM
CROSS-CLAIMS***

Case No. 08-CV-2365 (LAP)(RLE)

DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Cross-Claims and Counter-Claims found in Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Answer to Amended Second Third-Party Complaint, allege, upon information and belief, as follows:

CROSS-CLAIM FOR INSURANCE COVERAGE AGAINST DEFENDANT TRICON
CONSTRUCTIONS SERVICES, INC.

1. To the extent that a response to paragraph “22” of the Second Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Cross-Claim is required, defendant TRICON CONSTRUCTION SERVICES, INC. denies each and every allegation contained in paragraph “22” and defendant TRICON CONSTRUCTION SERVICES, INC. refers all questions of law to the Court for determination.

2. Denies each and every allegation set forth in paragraph “23” of the Second Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Cross-Claim.

3. To the extent that a response to paragraph “24” of the Second Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Cross-Claim is required, defendant TRICON CONSTRUCTION SERVICES, INC. denies each and every allegation contained in paragraph “24” and defendant TRICON CONSTRUCTION SERVICES, INC. refers all questions of law to the Court for determination.

COUNTERCLAIM FOR COMMON LAW INDEMINIFICATION AGAINST DEFENDANT
TRICON CONSTRUCTIONS SERVICES, INC.

4. Denies each and every allegation set forth in paragraph “25” of the Second Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim.

5. To the extent that a response to paragraph “26” of the Second Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim is required, defendant TRICON CONSTRUCTION SERVICES, INC. denies each and every allegation contained in paragraph “26” and defendant TRICON CONSTRUCTION SERVICES, INC. refers all questions of law to the Court for determination.

6. To the extent that a response to paragraph “27” of the Second Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim is required, defendant TRICON CONSTRUCTION SERVICES, INC. denies each and every allegation contained in paragraph “27” and defendant TRICON CONSTRUCTION SERVICES, INC. refers all questions of law to the Court for determination.

COUNTERCLAIM FOR CONTRACTUAL INDEMINIFICATION AGAINST DEFENDANT
TRICON CONSTRUCTIONS SERVICES, INC.

7. Denies each and every allegation set forth in paragraph “28” of the Second Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim.

8. Denies any knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph “29” of Second Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim, and defendant TRICON CONSTRUCTION SERVICES, INC. begs leave to refer to the contract/agreement/lease for its terms, provisions, limits and conditions.

9. To the extent that a response to paragraph “30” of the Second Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim is required, defendant TRICON CONSTRUCTION SERVICES, INC. denies each and every

allegation contained in paragraph “30” and defendant TRICON CONSTRUCTION SERVICES, INC. refers all questions of law to the Court for determination.

10. To the extent that a response to paragraph “31” of the Second Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim is required, defendant TRICON CONSTRUCTION SERVICES, INC. denies each and every allegation contained in paragraph “31” and defendant TRICON CONSTRUCTION SERVICES, INC. refers all questions of law to the Court for determination.

11. Denies any knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph “32” of Second Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim.

COUNTERCLAIM FOR COMMON LAW NEGLIGENCE AGAINST DEFENDANT TRICON CONSTRUCTIONS SERVICES, INC.

12. Denies each and every allegation set forth in paragraph “33” of the Second Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim.

13. To the extent that a response to paragraph “34” of the Second Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim is required, defendant TRICON CONSTRUCTION SERVICES, INC. denies each and every allegation contained in paragraph “34” and defendant TRICON CONSTRUCTION SERVICES, INC. refers all questions of law to the Court for determination.

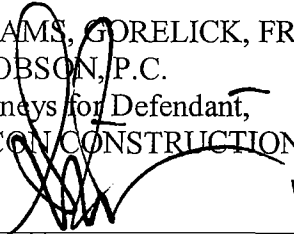
14. To the extent that a response to paragraph “35” of the Second Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim is required, defendant TRICON CONSTRUCTION SERVICES, INC. denies each and every

allegation contained in paragraph "35" and defendant TRICON CONSTRUCTION SERVICES, INC. refers all questions of law to the Court for determination.

WHEREFORE, the answering defendant, TRICON CONSTRUCTION SERVICES, INC., demands judgment dismissing Second Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC's Cross-Claims and Counter-Claims as to it, together with the costs and disbursements of this action, or, in the alternative, demands that the ultimate rights of the plaintiff, third-party defendants, answering defendant, and co-defendants, be determined in this action with regard to all claims, counterclaims, and cross-claims and that the answering defendant have judgment over and against the plaintiff, third-party defendants, and the co-defendants, each of them, in the proportion that each of their culpable conduct bears to the entire culpable conduct involved in the occurrence, and have judgment over and against, and indemnity from the plaintiffs, third-party defendants and the co-defendants together with the costs and disbursements of this action.

Dated: New York, New York
July 28, 2008

ABRAMS, GORELICK, FRIEDMAN &
JACOBSON, P.C.
Attorneys for Defendant,
TRICON CONSTRUCTION SERVICES, INC.

By: 
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485 Lexington Avenue
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New York, New York 10017
(917) 778-6600
Matter No.: 0921679KB

ALL KINDZA FLOORING
c/o Donna Connolly
484 Hawkins Avenue
Ronkonkoma, New York 11779

[illegible]

Gerardo Soler, being duly sworn, deposes and says:

I am not a party to the within action; I am over 18 years of age; I reside in Bronx, New York.

On July 28, 2008, I served the within Answer to Counter Claims and Cross-Claims upon:

Edward Wagner, Esq.
WAGNER & WAGNER, LLP
Attorney for Plaintiff
2508 Amboy Road
Staten Island, New York 10306
(718) 667-7400

Angela P. Pensabene, Esq.
HOEY, KING, TOKER & EPSTEIN
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ASSOCIATES, LLC, D&D BUILDING
COMPANY, LLC, and COHEN
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Kenneth B. Brown, Esq.
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485 Lexington Avenue
Seventh Floor
New York, New York 10017
(917) 778-6600

ALL KINDZA FLOORING
c/o Donna Connolly
484 Hawkins Avenue
Ronkonkoma, New York 11779

at the above address(es) by depositing a true copy of same, enclosed in a properly addressed postpaid wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Gerardo Soler

Sworn to before me this
28th day of July, 2008

Rose Falcón
Notary Public

ROSE FORTUNATO
COMMISSIONER OF DEEDS
CITY OF NEW YORK NO. 6-732
CERTIFICATE FILED IN RICHMOND COUNTY
COMMISSION EXPIRES MAY 1, 2010

June